

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 16, 2011

SENATE BILL

No. 217

Introduced by Senator Vargas

February 9, 2011

An act to amend Section 22013 of, and to add Section 22065 to, the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

SB 217, as amended, Vargas. California Finance Lenders Law: exemptions: mortgage loan originators.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers and mortgage loan originators, as defined, by the Commissioner of Corporations. Existing law exempts from the provisions of the California Finance Lenders Law specified persons and entities, including any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, and insurance premium finance agencies. A willful violation of the California Finance Lenders Law is a crime.

This bill would exempt from the definition of a mortgage loan originator, under the California Finance Lenders Law, an individual who acts as a mortgage loan originator for 5 or fewer residential mortgage loans during a calendar year, if specified requirements are met. The bill would also authorize a person exempt from the provisions of the California Finance Lenders Law to apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators under the federal Secure and Fair Enforcement for Mortgage Licensing

Act of 2008 (SAFE Act) if specified requirements are met, including that the mortgage loan originator is covered under an exclusive written contract with, and originates mortgage loans solely on behalf of, the exempt person. The bill would require an exempt person to comply with all rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act and would require an exempt person to pay an annual registration fee established by the commissioner.

Because a willful violation of these requirements under the California Finance Lenders Law would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22013 of the Financial Code is amended
2 to read:
3 22013. (a) “Mortgage loan originator” means an individual
4 who, for compensation or gain, or in the expectation of
5 compensation or gain, takes a residential mortgage loan application
6 or offers or negotiates terms of a residential mortgage loan.
7 (b) Mortgage loan originator does not include any of the
8 following:
9 (1) An individual who performs purely administrative or clerical
10 tasks on behalf of a person meeting the definition of a mortgage
11 loan originator, except as provided in subdivision (c) of Section
12 22014. The term “administrative or clerical tasks” means the
13 receipt, collection, and distribution of information common for
14 the processing or underwriting of a loan in the mortgage industry
15 and communication with a consumer to obtain information
16 necessary for the processing or underwriting of a residential
17 mortgage loan, to the extent that the communication does not
18 include offering or negotiating loan rates or terms, or counseling
19 consumers about residential mortgage loan rates or terms.

1 (2) An individual who solely renegotiates terms for existing
2 mortgage loans held or serviced by his or her employer and who
3 does not otherwise act as a mortgage loan originator, unless the
4 United States Department of Housing and Urban Development or
5 a court of competent jurisdiction determines that the SAFE Act
6 requires such an employee to be licensed as a mortgage loan
7 originator under state laws implementing the SAFE Act.

8 (3) An individual that is solely involved in extensions of credit
9 relating to timeshare plans, as that term is defined in Section
10 101(53D) of Title 11 of the United States Code.

11 (4) An individual licensed as a mortgage loan originator pursuant
12 to the provisions of Article 2.1 (commencing with Section
13 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and
14 Professions Code and the SAFE Act.

15 (5) (A) An individual who acts as a mortgage loan originator
16 for five or fewer residential mortgage loans during a calendar year
17 shall not be deemed a mortgage loan originator and shall not be
18 required to obtain a mortgage loan originator license from the
19 commissioner if all of the following requirements are met:

20 (i) The individual acts as a mortgage loan originator on behalf
21 of a single licensee.

22 (ii) The licensee on whose behalf the individual acts brokers
23 the loans exclusively to a single depository institution.

24 (iii) Before authorizing the individual to originate mortgage
25 loans on its behalf, the licensee submits the name of the individual
26 to the commissioner; agrees in writing, on a form acceptable to
27 the commissioner, to be accountable for the actions of the
28 individual in connection with the loan origination; and provides
29 any other information to the commissioner about the individual
30 that the commissioner may request.

31 (B) Any licensee that becomes aware of an individual who is
32 originating residential mortgage loans on its behalf and who has
33 exceeded the five loan per calendar year threshold shall
34 immediately notify the commissioner and shall direct the individual
35 to cease engaging in mortgage loan originator activity, until he or
36 she obtains a mortgage loan originator license.

37 (C) Notwithstanding Sections 22004 and 22059, a licensee may
38 broker loans to a depository institution *pursuant to this paragraph*.

39 (D) The exclusion from licensing provided by this paragraph
40 shall not apply if the Director of the federal Consumer Financial

1 Protection Bureau or a court of competent jurisdiction makes a
2 final and specific determination that this paragraph does not comply
3 with the requirements of Section 1508 of the SAFE Act (12 U.S.C.
4 Sec. 5107).

5 (c) “Registered mortgage loan originator” means any individual
6 who is all of the following:

7 (1) Meets the definition of mortgage loan originator.

8 (2) Is an employee of a depository institution, a subsidiary that
9 is owned and controlled by a depository institution and regulated
10 by a federal banking agency, or an institution regulated by the
11 Farm Credit Administration.

12 (3) Is registered with, and maintains a unique identifier through,
13 the Nationwide Mortgage Licensing System and Registry.

14 (d) “Loan processor or underwriter” means an individual who
15 performs clerical or support duties as an employee at the direction
16 of, and subject to the supervision and instruction of, a mortgage
17 loan originator licensed by the state or a registered mortgage loan
18 originator.

19 SEC. 2. Section 22065 is added to the Financial Code, to read:

20 22065. (a) Persons not subject to this division may apply to
21 the commissioner for an exempt company registration for the
22 purpose of sponsoring one or more individuals required to be
23 licensed as mortgage loan originators pursuant to the SAFE Act.
24 A mortgage loan originator eligible for licensure pursuant to this
25 section shall meet all of the following requirements:

26 (1) Be covered under an exclusive written contract with, and
27 originate mortgage loans solely on behalf of, that exempt person.

28 (2) Be a licensed insurance producer in good standing under
29 Article 3 (commencing with Section 1631) of Chapter 5 of Part 2
30 of Division 1 of the Insurance Code.

31 (3) Hold a license from the Insurance Commissioner as an
32 insurance producer for an insurer that controls, is controlled by,
33 or is under common control with that exempt person.

34 (b) An exempt person shall comply with all rules and orders
35 that the commissioner deems necessary to ensure compliance with
36 the SAFE Act and shall pay an annual registration fee established
37 by the commissioner.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O